
CONFERENCE REPORTS

International Symposium on TRIPS and Access to Medicines

An international symposium on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Access to Medicines, was organized by the National Working Group on Patent Laws and Medecins Sans Frontieres in New Delhi, on 4 June 2001. Over 75 senior experts including 23 from abroad participated in the symposium.

Critical issues relating to TRIPS Agreement were deliberated upon in the following sessions:

International Scenario on TRIPS, Issues of Implementation and Review of TRIPS, Implications of TRIPS for R&D and Technology Dissemination, Pharmaceutical Industry in India and Future Role in Ensuring Access to Essential Medicines, and Implications of TRIPS for Healthcare.

Speakers at the symposium stressed on the need to utilize provisions available in the TRIPS agreement to ensure production of cheap drugs by domestic manufacturers in developing countries. For this, legislation in developing countries need to have licensing and other provisions that prevent abuse of monopoly positions by MNCs and also allow imports of drugs from the global market at lower prices. It was also pointed out that the next few years are going to be crucial, as

developed countries challenge laws enacted by developing countries like Brazil in the WTO dispute settlement mechanism.

The resolution in WTO of the complaint made by the US against Brazil for violation of the TRIPS agreement because the former has included provisions that allow it to produce cheap anti-AIDS drugs by licensing domestic manufacturers is being seen as crucial in this context.

The speakers expressed concern at the trend in intellectual property protection that is increasingly skewing the balance of the rights of patent holders and consumers in favour of the former.

According to the participants, the TRIPS Agreement marks a fundamental shift in this balance, as well as a shift in global attitudes where private profits are put ahead of social benefits. This is further fueled by dependence of economies in the developed world on industries that require strong IP protection.

Of the 15 most profitable industries today, 6 are from the pharmaceutical sector and 5 from the IT sector. It was also pointed out that IP protection allows such industries to create monopolies, not only over production, but also in the control of knowledge.

The net result of this trend, in the pharmaceutical sector, has been high cost of medicines and the consequent denial of access to medicines by the income poor across the globe. Further, it has also led to a situation where medicines required to treat disease that predominantly occur among the poor are not researched at all. Instead drugs that are being researched are drugs used for "lifestyle" diseases like baldness, impotence, obesity, etc.

While the pharmaceutical industry claims that high prices are explained by the massive expenditure on R&D, the truth is that drugs they actually research have little relevance to real medical needs. Moreover, the kind of profits that big pharmaceutical MNCs generate is an indication of profiteering and not just legitimate profit making.

Speakers also commented on the adverse effect that TRIPS has on R&D and technology dissemination in developing countries. It was pointed out that such capabilities, built up in countries like India, Brazil and Argentina are under serious threat. The need to organize public funded research in these countries was stressed.

The widely evocative issue of access to anti-retrovirals, i.e. drugs that are used to treat AIDS patients, has played a major role in the way the international community today sees the pharmaceutical industry.

Treatment of AIDS with a combination of drugs - called Highly Active Anti-retroviral Treatment (HAART) - has decreased mortality from AIDS by 84% in developing countries. Unfortunately less than 5% of AIDS infected people across the globe have access to such treatment currently, because the estimated cost of treatment by HAART is about \$ 12,000 per person per year.

At present rates, Zimbabwe, Uganda and Ivory Coast would require to spend 265%, 172% and 84% of their respective Gross National Products, just to buy drugs to treat all their AIDS patients. This issue has been the rallying point of a major global campaign that today is demanding a closer, critical look at the TRIPS Agreement.

Condemnation of the role of pharmaceutical companies reached a crescendo due to the lawsuit brought against the South African government in Pretoria's High Court by 39 pharmaceutical companies.

The lawsuit targeted legislation by South Africa - the Medicines and Related Substances Control Amendment Act, No 90 of 1997 - which allowed the country access to cheaper anti-AIDS drugs. The US government, which placed South Africa on the Special 301 Watch List, and the European Union, which wrote to then Vice President of South Africa, Mbeki, to express its concern about the legislation, supported the 1998 lawsuit.

This move by the pharma majors evoked a massive counter-response across the globe, led by MSF. The companies suffered a major defeat when, in April 2001 the companies capitulated to mounting anger and disgust over their conduct and agreed to withdraw the case unconditionally.

About two months back Brazil moved a resolution at the UN Human Rights Commission, which was approved by 52 votes in favour, zero against and one abstention (USA). The resolution, among other things, called upon States, at the international level, to ensure that "the application of international agreements is supportive of public health policies which promote broad access to safe, efficient and affordable preventive, curative or palliative pharmaceuticals and medical technologies..."

Today many national governments in third world countries are backing protests and

demonstrations against the WTO in general and the TRIPS regime in particular. Countries in Africa, Latin America and Asia, as well as organizations campaigning for access to cheap anti-AIDS drugs see India as a potential source of cheap drugs.

In March 2001, Cipla Ltd announced that it would offer the combination of anti-AIDS drugs at a cost of \$ 600 per patient per year, and later announces that they could bring down cost to \$ 350. Two other companies, Hetero Drugs and Ranbaxy, matched Cipla's offer within weeks. These offers are, till date, by far the cheapest that have been made anywhere in the world. In other words, Indian companies are now offering drugs to treat AIDS at prices that are one fortieth of global prices ! Such a precipitous fall in prices can revolutionize AIDS treatment in developing countries, and save millions of lives.

The defeat for the 39 pharmaceutical companies in South Africa is not the end of the battle. Every country that has tried to interpret the TRIPS Agreement in a manner that allows access to cheaper drugs for its people is faced with a hostile reaction from the US. But it has led to the building of an unprecedented global coalition against the use of TRIPS to deny the poor access to drugs.

Representatives from the Indian Drug Manufacturers Association and the Indian Pharmaceutical alliance spoke of the need to tailor the Indian Patents Act - still at the drafting board - to the needs of domestic industry, and domestic consumers.

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